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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 143

UNITED STATES OF AMERICA, PETITIONER

v.

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the First Circuit entered in the above-entitled case on March 15, 1937, reversing the judgment of the United States District Court for the District of Massachusetts.

OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts (R. 24–27) is not yet officially reported. The opinion of the United States Circuit Court of Appeals for the First Circuit (R. 36) is not yet officially reported.

JURISDICTION

The judgment of the Circuit Court of Appeals for the First Circuit was entered March 15, 1937. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Act of June 25, 1910, c. 384, 36 Stat. 703, is unconstitutional.

2. Irrespective of the constitutionality of the Act, is a contract, freely entered into, valid and enforceable where it provides for the disposition of personal property of a member of a national home for disabled volunteer soldiers in the event of his intestacy.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra,* pp. 8–9.

STATEMENT

The agreed statement of facts (R. 16–19) may be summarized as follows:

Thomas McGovern, an honorably discharged veteran, on November 11, 1925, was admitted to the Southern Branch of the National Home for Disabled Volunter Soldiers at Hampton, Virginia (hereinafter referred to as the "Home"), where he died on September 17, 1928.

In compliance with the terms of the Act of June 25, 1910, *infra,* p. 8, at the time of his admission, and in his application, he agreed as follows (R. 17):

> The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Military Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pension or otherwise derived, shall vest in and become the property of said Board of Managers for the sale, [*sic.*] use, and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, and [*sic.*] subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; * * *.

McGovern died on September 17, 1928, and was survived by a wife and four children, one of whom, a son, had been declared insane in 1918 (R. 17–18). Since 1904, McGovern had not lived with his family, and, although the son lived with him until his commitment to the asylum in 1918, for the last twenty years of his life his wife and his other children had no knowledge of his whereabouts (R. 18). In his application, McGovern did not give the address of any of his family, nor did anyone on behalf of the Home make any attempt to locate his wife or children, who did not learn of his death until October 19, 1935 (R. 18), more than five years

after McGovern's death. At the time of his death, McGovern, whose legal domicile was Chelsea, Massachusetts, had a deposit in the Chelsea Trust Company, which, on July 3, 1925, amounted to $3,841.10, represented by account No. 1295 (R. 18). He also had a deposit in the Boston Five Cents Savings Bank, which, on October 15, 1925, amounted to $1,980.10, represented by account No. 701775 (R. 18). It does not appear that any claim for the property was ever filed by respondents.

A bill of complaint was filed by the United States in the United States District Court for the District of Massachusetts against the Chelsea Trust Company and the respondents, on April 10, 1936, in which bill the United States alleged that the Trust Company refused to pay over to it the amount of the deposit, because of the claim of respondents, and asked that the bank deposit be turned over to it (R. 1–6). The bill was answered by the Trust Company, by Helen J. Stevens, who had theretofore been appointed administratrix of the estate of Thomas McGovern, and by the heirs of Thomas McGovern, the answer denying the application of the statute to the particular facts (R. 6–16). On June 5, 1936, the District Court entered judgment for the United States and on appeal this judgment was reversed by the Circuit Court of Appeals for the First Circuit, one judge dissenting.

SPECIFICATION OF ERRORS TO BE URGED

The court erred:

1. In holding that the Act of June 25, 1910, was unconstitutional.

2. In holding that the Act of June 25, 1910, attempts to control the descent and devolution of the property of the members of the Home contrary to the provisions of the Tenth Amendment to the Constitution.

3. In holding that the Act should have provided for notice by publication or otherwise of a member's death.

4. In failing to hold that a valid and enforceable contractual relationship was established between the Home and the member upon his admission.

5. In reversing the judgment of the District Court for the District of Massachusetts.

REASONS FOR GRANTING THE WRIT

1. The court below has decided that the Act of June 25, 1910, *infra,* p. 8, is unconstitutional, because it violates the Tenth Amendment to the Constitution. The Act has been in effect for approximately twenty-seven years, and contracts entered into pursuant to the terms thereof involve the potential estate of a very large number of veterans who are members of National Homes. The court below has decided an important question of Federal law which has not been, but should be, settled by this Court.

2. The decision of the court below is in probable conflict with the decision of this Court in *National Home for Disabled Volunteer Soldiers* v. *Wood*, 299 U. S. 211, and with the decision of the Circuit Court of Appeals for the Seventh Circuit in that same case, 81 F. (2d) 963. It was there held that a contract entered into in accordance with the Act of 1910 was valid and enforceable, and determined the manner in which the pension money of a deceased member should pass. While the constitutionality of the 1910 Act was not raised or presented in the *Wood* case, nevertheless it would follow that if the Act in question were unconstitutional that case would not serve as a precedent, and the contention originally advanced by the Government, namely, that the Act of July 1, 1902, would control the disposition of pension money of deceased members of a Home, might well be open. While the court below intimated that the 1910 Act might be constitutional in so far as it relates to pension money, that question was not before it, and the entire purpose of the 1910 Act, which aims at preventing escheat of personal property belonging to deceased members, would not be accomplished. Cong. Rec., Vol. 45, pp. 7011–7013, 7101. It is not believed that the 1910 Act is separable in respect of the different classes of personal property enunciated therein.

3. Finally, the decision of the court below would appear to be incorrect. Congress clearly recognized its inability to legislate in respect of descent

and distribution. In order, however, to prevent escheat of personal property belonging to deceased members, it adopted the expedient of requiring a member when entering the home by contract to agree as to the manner in which his personal property should pass upon his death. Contracts which have for their purpose the distribution of certain property of an individual after his death are enforceable. *Ex parte Simons,* 247 U. S. 231; *Brooks* v. *Yarbrough,* 37 F. (2d) 527 (C. C. A. 10th); *Richardson* v. *City Trust Co.,* 27 F. (2d) 35 (C. C. A. 7th); *Russell* v. *Jones,* 135 Fed. 929 (C. C. A. 5th); *Howe* v. *Watson,* 179 Mass. 30; *Wellington* v. *Apthorp,* 145 Mass. 69; *Jenkins* v. *Stetson,* 9 Allen (Mass.) 128. The statute condemned by the court below did no more than provide for the formation of contracts of a nature repeatedly held to be valid.

CONCLUSION

For the reasons stated, it is respectfully submitted that this application for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

JUNE 1937.

APPENDIX

Act of June 25, 1910, c. 384, 36 Stat. 703, 736 (U. S. C., Title 24, Sec. 136):

> Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant and as to contain the consent

of the applicant to accept membership upon the conditions herein provided.

Act of July 3, 1930, c. 863, 46 Stat. 1016, 1017 (U. S. C., Title 38, Sec. 11d):

SEC. 5. (a) When the consolidation and coordination herein provided for shall have been effected in the Veterans' Administration the President shall so declare by proclamation or order, whereupon the corporation known as the National Home for Disabled Volunteer Soldiers and the Board of Managers shall cease to exist.

(b) All contracts and other valid and subsisting obligations of the corporation, the National Home for Disabled Volunteer Soldiers, shall continue and be and become obligations of the United States, and the United States shall be considered as substituted for said corporation with respect to all such demands either by or against said corporation, unless and until they shall thereafter be superseded or discharged according to law. The outstanding obligations assumed by the United States by virtue of the provisions of this subdivision may be enforced by suit in the Court of Claims or in the district courts of the United States according to the ordinary provisions of law governing actions against the United States, and such courts shall have the power to enter judgment against the United States, with interest, in the same manner and to the same extent as if said corporation were party defendant. No such suit shall be maintained upon any cause of action existing at the time of the dissolution of said corporation or arising simultaneously therewith, unless brought within two years from the time of such dissolution.

U. S. GOVERNMENT PRINTING OFFICE: 1937